

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists. This regulation is being adopted as an emergency regulation necessary for the immediate preservation of the general welfare, within the meaning of Government Code Section 11346.1.

Description of Specific Facts Which Constitute the Emergency:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease.

The Department proposes to amend this regulation because it is necessary to modify the authority for an established statewide program in order to arrest the artificial spread of the disease to areas that are not under regulation. Immediate amendment of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands.

In addition, because the spread of the disease threatens the agricultural industry of California, its detection in additional host plants constitutes an emergency necessitating immediate action to arrest the spread of the pest. Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in twelve California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting canyon live oak and Shreve's oak and non-oak species such as andromeda, bigleaf maple, camellia, California buckeye, California coffeeberry, coast redwood, Douglas-fir, huckleberry, laurustinus, manzanita, rhododendron, toyon, Western star flower and witch hazel causing foliar and stem disease symptoms.

Recently, the causal agent of limited disease symptoms detected on the leaflets of wood rose (*Rosa gymnocarpa*), a native shrub of *Rosaceae*, was identified as *Phytophthora ramorum*. The affected leaflets had lesions or spots, sometimes delimited by a chlorotic zone that coalesced with time and spread into the petiole and rachis, thus involving the entire leaf. Therefore, the Department is proposing to amend Section 3700(c) to add leaves of the wood rose (*Rosa gymnocarpa*) to the regulation.

This amendment of Section 3700(c) will establish that leaves of the wood rose (*Rosa gymnocarpa*) are included as regulated articles and commodities. If the disease is allowed to spread and become established in areas outside the current regulated area, California's agricultural industry will suffer losses due to the death of trees in native stands and ornamental plantings and loss of markets if other states or countries enact quarantines against California products.

To prevent artificial spread of the disease to non-infested areas to protect California's agricultural industry, it is necessary immediately to establish and enforce restrictions on the movement of these additional hosts and potential carriers, which can move this pest from the infested, regulated area. Therefore, it is necessary to amend Section 3700(c) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407, 5321 and 5322, Food and Agricultural Code.

Reference: Sections 24.5, 5321, and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; Section 1084 *et seq.*, Code of Civil Procedure.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

Section 3700(c). Oak Mortality Disease Control.

This proposed amendment of the regulation would add leaves of the wood rose (*Rosa gymnocarpa*) as hosts of *Phytophthora ramorum*, which causes Oak Mortality Disease, and will establish the plant and plant parts of this plant that will be subject to restrictions on handling and movement. The effect of the proposed amendment will be to provide authority for the State to regulate movement of this additional host and potential carrier of disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3700 does impose a mandate on local agencies, but not on school districts. Reimbursement will be made for costs resulting from this mandate from funds budgeted for this purpose.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.